

in the criminal courts of Lauderdale County. When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand. As we pointed out in *Hill v. Texas*, 316 U. S. 400, 406, our holding does not mean that a guilty defendant must go free. For indictments can be returned and convictions can be obtained by juries selected as the Constitution commands.

The judgment of the Mississippi Supreme Court is reversed and the case is remanded for proceedings not inconsistent with this opinion.

*Reversed.*

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SILESIAN-AMERICAN CORP. ET AL. v. CLARK,  
ATTORNEY GENERAL, AS SUCCESSOR TO THE  
ALIEN PROPERTY CUSTODIAN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 6. Argued May 1, 1947.—Reargued November 12, 1947.—  
Decided December 8, 1947.

1. Pursuant to the Trading with the Enemy Act, as amended by the First War Powers Act of 1941, and Executive Order 9095, as amended, the Alien Property Custodian issued an order vesting in himself title to certain shares of stock in petitioner, a Delaware corporation, and directing petitioner to cancel the certificates for such stock outstanding on its books and to issue new certificates to the Custodian. The order contained a finding that, although prior to August 31, 1939, the shares stood on the books of petitioner in the name of a Swiss corporation, they were held for the benefit of a German corporation, and constituted property belonging to a national of Germany. It was contended that the shares were pledged to certain Swiss banks as collateral for a loan. *Held*: The Custodian's order is valid and must be complied with. Pp. 474-479.

## Statement of the Case.

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2. Petitioner has no legal interest in the issue as to ownership of its stock and no standing to represent the interests of its shareholders or pledgees of its stock. P. 474.
  3. Under the war power, which includes reasonable preparation for war, the United States, acting under a statute, may summarily reduce to possession in furtherance of the war effort any property in this country of any alien; and the problems of compensation may await the judicial process. Pp. 474-477.
  4. The vesting order of the Custodian was authorized by § 5 (b) (1) of the Trading with the Enemy Act, as amended, and Executive Order 9095, as amended. P. 477.
    - (a) The fact that the stock certificates did not come into the hands of the Custodian is immaterial. P. 477.
    - (b) The power to require the issuance of new certificates was incidental to the Custodian's power to vest in himself the property of a foreign national, including stock ownership in an American corporation. P. 477.
  5. Sections 5 (b) (2) and 7 (e) of the Trading with the Enemy Act, as amended, protect petitioner from any liability to bona fide holders of its shares by reason of any infirmity in the Custodian's vesting order or his direction that new certificates be issued to him. Pp. 477-478.
  6. The Custodian's vesting order was not contrary to § 8 (a) of the Trading with the Enemy Act, which formerly exempted property pledged to "any person not an enemy or ally of enemy"; because the later enactment of § 5 (b) (1) rendered § 8 (a) inapplicable to the property of friendly aliens. Pp. 478-479.
  7. The Constitution guarantees to friendly aliens the right to just compensation for the requisitioning of their property by the United States; and it must be assumed that the United States will meet its obligations under the Constitution. Pp. 479-480
- 156 F. 2d 793, affirmed.

A Bankruptcy Court instructed a corporation in reorganization proceedings under Chapter X to comply with an order of the Alien Property Custodian vesting in himself shares of the corporation's stock outstanding in the name of a friendly alien and directing the corporation to cancel the shares on its books and to issue new certificates therefor to the Custodian. The Circuit Court of Appeals affirmed. 156 F. 2d 793. This Court denied

certiorari, 329 U. S. 730; but, on rehearing, granted certiorari and substituted the Attorney General, successor to the Alien Property Custodian, as the party respondent. 330 U. S. 852. *Affirmed*, p. 480.

*Leonard P. Moore* argued the cause for petitioners. With him on the briefs were *George W. Whiteside* and *William Gilligan*.

*James C. Wilson* argued the cause on the original argument for respondent. With him on the brief were *Acting Solicitor General Washington*, *Assistant Attorney General Sonnett*, *Harry LeRoy Jones*, *M. S. Isenbergh*, *James L. Morrisson* and *John Ward Cutler*.

*James L. Morrisson* reargued the cause for respondent. With him on the brief were *Solicitor General Perlman*, *Assistant Attorney General Bazelon* and *M. S. Isenbergh*.

MR. JUSTICE REED delivered the opinion of the Court.

The Alien Property Custodian on November 17, 1942, executed Vesting Order No. 370. This order was issued under the authority of the Trading with the Enemy Act, 40 Stat. 411, as amended, and Executive Order No. 9095, as amended, and in terms vested the property therein described in the Alien Property Custodian in the interest and for the benefit of the United States. The order found the property to belong to a national of Germany. The property covered by the order was two blocks of stock—one common, one preferred—in the Silesian American Corporation, a Delaware corporation, herein-after called Silesian. The stock, prior to August 31, 1939, stood in the stock book of Silesian in the name of Non Ferrum Gesellschaft zur Finanzierung von Unternehmungen des Bergbaues und der Industrie der Nicht-eisenmetalle, Zurich, Switzerland, a Swiss corporation,

hereinafter referred to as the Non Ferrum Company. Non Ferrum, it was determined by the Custodian's order, held the stock for the benefit of Bergwerksgesellschaft Georg von Giesche's Erben, a German corporation. The certificates, it is asserted, had been deposited as security for loans with a group of banks, all of which apparently were chartered by Switzerland and are hereinafter referred to as the Swiss Banks.<sup>1</sup>

To carry out the purpose of his vesting order, the Custodian directed Silesian to cancel on its books the outstanding Non Ferrum certificates, above referred to, and to issue in lieu thereof new certificates to the Custodian. This controversy revolves around the objection of Silesian so to act because the Custodian did not have physical possession of the pledged Non Ferrum certificates so as to be able to surrender them for cancellation, as the corporation's by-laws required. Silesian feared liability to the holders of the Non Ferrum certificates for issuing other certificates in such circumstances.

Silesian had been a debtor under Chapter X of the Bankruptcy Act since July 30, 1941. It therefore asked the Bankruptcy Court for instructions as to its compliance with the Custodian's direction. The other petitioner here, Silesian Holding Company, a Delaware corporation also, appeared and throughout has remained as a party to this litigation. It is the majority stockholder of Silesian but claims no different or other interest in the issue than Silesian. For the purpose of this case, it may and will be treated as having no more interest in the issue than Silesian has. The Swiss Banks asked the Reorganization Court to give instructions to the Debtor that no new shares be issued until the controversy between the Swiss Banks and the Custodian could be "fully, firmly and finally ad-

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<sup>1</sup> They are Union Bank of Switzerland, La Roche & Company, Banque Cantonale de Berne, and Aktiengesellschaft Leu & Company.

judicated." This prayer was based on a verified answer to Silesian's request for instruction, which answer alleged that the "Swiss Banks were the owners of the 'Non Ferrum' stock." The Swiss Banks notified Silesian that any issue of new certificates representing the Non Ferrum stock, with or without court direction, would be at Silesian's risk. Affidavits supporting the objection of the Swiss Banks to instructions to Silesian to issue the new certificates to the Custodian were filed with the District Court. These affidavits declared the Non Ferrum stock was pledged, prior to 1938, to groups of Swiss banks. It is not clear whether they are the same institutions that are named in the answer of the Swiss Banks to the Debtor's request for instructions. For the purpose of this case, we assume that the groups are identical.

The District Court instructed the debtor to issue new certificates to the Alien Property Custodian. The court said:

"The vesting order of the Custodian found that the stock was held for the benefit of an enemy. The statutory discharge from liability, § 5b or § 7e, [Trading with the Enemy Act] protects the debtor corporation and relieves it of doubt in the premises."

The court added:

"Whatever may be the interests or rights of the Swiss banks, they cannot be considered here. Hearsay statements, unsupported by documents, allege that these banks are pledgees of the stock. These statements create no issue for our consideration. The banks are parties herein only to the extent that they have been recognized in the reorganization proceeding as possible owners of a claimed interest which they have never been called upon to prove. They are not here because of any action taken against them

or any recognition given them by the Custodian or even by reason of any established interest in the stock."

No appeal to the Circuit Court of Appeals was taken by the Swiss Banks. They do not appear here as parties to this writ of certiorari or otherwise. We therefore express no opinion as to the effect of the order and decision of the District Court upon the claims of the Swiss Banks as pledgees of the Non Ferrum stock. See *Silesian-American Corporation v. Markham*, 156 F. 2d 793, 795.

An appeal was taken to the Circuit Court of Appeals by Silesian. That court affirmed the order of the Bankruptcy Court. We first denied a petition for certiorari and then granted it so that this case might be considered in relation to other issues, thereafter presented here, in connection with the administration of the Trading with the Enemy Act. 329 U. S. 730 and 330 U. S. 852; *Clark v. Uebersee Finanz-Korporation*, 330 U. S. 813.

It was held by the Circuit Court of Appeals that Silesian had no "standing vicariously" to assert the interests of its shareholders. We agree. Silesian has no legal interest in the issue as to the ownership of its stock. It follows that Silesian has no standing to represent the interests of the pledgees of the Non Ferrum shares, if that is the present position of those shares. See *Anderson Nat. Bank v. Lockett*, 321 U. S. 233, 242. This reduces petitioners' objection to the order directing the issue of new certificates in favor of the Custodian for the Non Ferrum stock to the claim that the sections of the Trading with the Enemy Act under which the Custodian acted are invalid as applied to Silesian in these circumstances. If the provisions do not authorize the order and direction, Silesian, over its own objections, cannot be compelled to obey.

The Custodian vested the stock in himself by virtue of the Trading with the Enemy Act, as amended by the First

War Powers Act of 1941, including, of course, § 5 (b) (1),<sup>2</sup> and Executive Order No. 9095, C. F. R. Cum. Supp. 1121, as amended 1174. This property was vested during war. There is no doubt but that under the war power,<sup>3</sup> as heretofore interpreted by this Court, the United States, acting under a statute, may vest in itself the property of a national of an enemy nation. Unquestionably to wage war successfully, the United States may confiscate enemy property. *United States v. Chemical Foundation*, 272 U. S. 1, 11. Nor can there, we think, be any doubt that any property in this country of any alien may be summarily reduced to possession by the United States in fur-

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<sup>2</sup> Trading with the Enemy Act, 40 Stat. 411, as amended by the First War Powers Act of 1941, 55 Stat. 839, § 5 (b) (1):

"During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

"(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; . . . ."

<sup>3</sup> Art. I, § 8, cl. 11.

therance of the war effort. Every resource within the ambit of sovereign power is subject to use for the national defense. This section was amended during war to cover the taking of alien property. It is limited to a war or a declared emergency period. While a natural hesitancy exists against so interpreting the war power clause as to expand its scope to cover incidents not intimately connected with war, we think reasonable preparation for the storm of war is a proper exercise of the war power. This seizure of alien property, in a time of emergency, is of that character. We need not consider whether the general welfare clause could be a source of congressional power over alien property.<sup>4</sup> This taking may be done as a means of avoiding the use of the property to draw earnings or wealth out of this country to territory where it may more likely be used to assist the enemy than if it remains in the hands of this government. Or the commandeered property of a friendly alien may be used to prosecute the war. The problems of compensation may await the judicial process. *Central Union Trust Co. v.*

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<sup>4</sup> Compare with the statement below: "The power of Congress to seize and confiscate enemy property rests upon Art. 1, § 8, Clause 11 of the Constitution. *Stoehr v. Wallace*, supra, 255 U. S. at page 242 . . . ; *United States v. Chemical Foundation, Inc.*, 272 U. S. 1, 11 . . . . Whether it exists at international law may be doubted; but nobody contends that the war power of Congress includes the seizure of the property of friendly aliens. The amendment of § 5.(b) must therefore rest upon some other power of Congress, not only for that reason, but because the amendment itself was expressly not limited to time of war (although it was in fact passed *flagrante bello*) but was to go into effect upon any 'national emergency declared.' It can rest upon Art. 1, § 8, Clause 1: i. e. upon the power 'to provide for the common Defence and general Welfare'; indeed, so far as we can see, the debtor does not challenge the power itself, but its exercise. It complains that the amendment delegates an unrestricted discretion to the President, and does not provide 'just compensation' for seizures." 156 F. 2d 793, 796.



direction, even though this seizure is contrary to § 8 (a), a way has been found to "coerce an interested party [Silesian] into compliance with his [the Custodian's] unlawful actions." The answer to this contention is made by the Circuit Court of Appeals. It makes unnecessary any discussion of the protection afforded Silesian by § 7 (e) and § 5 (b) (2) from the claims of a pledge of stock exempted by statute from seizure. 156 F. 2d at 797. When § 5 (b) (1) was enacted as an amendment in the First War Powers Act of 1941, it authorized the taking of any property or interest therein of any foreign national. This broadening of the scope of the Custodian's power to vest so as to include interests of friendly aliens in property includes the power to vest the interest which friendly aliens have from pledges. As the Circuit Court of Appeals said, p. 797:

"Any other interpretation of the section would make the pledges of friendly aliens a wholly irrational exception to the general purpose to subject all alien interests to seizure."

Therefore, as we hold that § 5 (b) (1) rendered § 8 (a) inapplicable to the property of friendly aliens, the order of the Custodian was valid and Silesian's objection disappears.

Finally there is the argument that Silesian cannot be compelled to issue the new certificates because the friendly aliens who claim interests in the Non Ferrum stock may not succeed in recovering the just compensation for the taking. See *Russian Volunteer Fleet v. United States*, 282 U. S. 481, 489.<sup>7</sup> The Constitution guarantees to friendly aliens the right to just compensa-

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<sup>7</sup> The Circuit Court of Appeals said: "Thus it can be argued with much force that, unless some provision can be found by which he may secure compensation, § 5 (b) is unconstitutional; and, if so, it would at best be doubtful whether the protection given by subsection (2) would be valid." 156 F. 2d 793, 797.

tion for the requisitioning of their property by the United States. *Russian Fleet v. United States, supra*. We must assume that the United States will meet its obligations under the Constitution. Consequently, friendly aliens will be compensated for any property taken and Silesian is protected by the exculpatory clauses of the Act from any claim from its alien stockholders.

*Judgment affirmed.*

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

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CLARK, ATTORNEY GENERAL, AS SUCCESSOR  
TO THE ALIEN PROPERTY CUSTODIAN, *v.*  
UEBERSEE FINANZ-KORPORATION, A. G.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA.

No. 35. Argued May 1, 1947.—Reargued November 12, 1947.—  
Decided December 8, 1947.

1. Respondent, a corporation organized under the laws of Switzerland and having its principal place of business in that country, sued under § 9 (a) of the Trading with the Enemy Act to reclaim property which the Alien Property Custodian had vested in himself under § 5 (b), as amended by the First War Powers Act of 1941. The property seized consisted of shares of stock in corporations organized under the laws of various States of this Nation and of an interest in a contract between two such corporations and, according to the allegations of the complaint which are assumed to be true, was free of all enemy taint—*i. e.*, the corporations whose shares had been seized, the corporations which had a contract in which respondent had an interest, and respondent itself, were corporations in which no enemy, ally of an enemy, or any national of either, had any interest of any kind whatsoever, and respondent had not done business in the territory of the enemy or any ally of an enemy. *Held*: Respondent is entitled to maintain the suit. Pp. 482–490.